

Message Text

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TO AMEMBASSY TOKYO

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E.O. 11652: N/A

TAGS: BDIS JA

SUBJ: LITTLE BEAVER CREEK RANCHES VS: NOSAWA

REF: STATE 188970; TOKYO CABLE 11826 AND A-590; COMMERCE O.M. 11/1/74

1. COMMERCE REQUESTS CAREFUL POST REVIEW OF ENCLOSURES SENT WITH REF. O.M. AND THAT EMBASSY ARRANGE NEW NOSAWA MEETING WITH OBJECTIVES OF RESOLVING IMPASSE IN DIRECT NEGOTIATIONS BETWEEN DISPUTING PARTIES AND REGISTERING FAR STRONGER SUPPORT FOR COMPLAINANT'S POSITION THAN PARA. TEN REFTEL SUGGESTS WAS INITIAL EMBASSY JUDGMENT. PRIME REASONS FOR REQUEST ARE:

A) OCTOBER SUBMISSION BY LBCR OF ADDITIONAL AND EXPLICIT DOCUMENTATION JUSTIFYING ITS CLAIMS.

B) CONFIRMED INTEREST OF BOTH SENATORS AND GOVERNOR OF MONTANA IN USG ASSISTANCE TO MOORE AND LBCR AFTER RECEIVING AND REVIEWING DISPUTE DETAILS.

C) BIC'S 8/19 ACKNOWLEDGEMENT TO MOORE'S LETTER TO DOBBIN,
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WHICH UNFORTUNATELY WAS NOT TRANSMITTED TO EMBASSY FOR INFORMATION BUT WHICH IS NOW BEING POUCHED, STATED IN PART: QUOTE WE HAVE REQUESTED THE AMERICAN EMBASSY IN JAPAN TO APPROACH THE BUYERS PROMPTLY AND URGE THEIR RELEASE OF THE PROCEEDS COLLECTED FROM THEIR CUSTOMERS, LESS THE REDUCTION OF \$8050 WHICH YOU HAVE VOLUNTARILY OFFERED AS AN ADJUSTMENT. THAT PAYMENT WILL NOT NECESSARILY MEAN WITHDRAWAL OF THE COUNTERCLAIM ON YOUR APRIL SHIPMENT. WE CONCUR WITH YOUR VIEW THAT THIS DISPUTE SHOULD BE HANDLED SEPARATELY, AND HOPE THAT NOSAWA AND COMPANY WILL ALSO AGREE TO ACCEPT THAT APPROACH. UNQUOTE

2. WITH RESPECT TO (A), IT IS REGRETTABLE THAT NEITHER COMMERCE NOR EMBASSY HAD KNOWLEDGE BEFORE SEPTEMBER 4 MEETING OF LBCR'S AUGUST 8 LETTER TO NOSAWA OR SEQUENCE OF EVENTS REPORT SUPPLIED BY MOORE ON 10/28. FORMER COMMUNICATION WAS CERTAINLY IN NOSAWA HANDS PRIOR 9/4 (EMBTel 11286) AND RESPONDS TO OR REFUTES MAJORITY OF NOSAWA COUNTERCLAIM POINTS CITED IN EMBTEL 11826. THERE IS ALSO AT LEAST POSSIBILITY THAT AUGUST 23 LETTER TO LBCR WAS WRITTEN (AND DATED) AFTER RECEIPT AUG.8 COMMUNICATION. WE SURMISE THAT NOSAWA TACTIC ON 9/4, KNOWING THAT DIFFERENCES WITH LBCR WERE UNRECONCILABLE, WAS TO PERSUADE EMBASSY OF LOGIC IN ITS POSITION AND POST'S REPORT ACCORDINGLY TO WASHINGTON.

3. BIC RECOMMENDS NOSAWA SHOULD NOW BE INFORMED (A) THAT THE ORIGINAL WASHINGTON JUDGMENT WAS THAT THERE WERE TWO SEPARATE CASES (APRIL AND JUNE SHIPMENTS), BUT THAT EMBASSY WAS UNAWARE OF THAT CONCLUSION AT TIME OF SEPTEMBER MEETING; (B) THAT DOCUMENTATION SUBSEQUENTLY SUBMITTED FULLY VALIDATES THIS DISTINCTION; (C) THAT WE DO NOT AGREE WITH POSITION TAKEN BY NOSAWA IN ITS 8/23 LETTER TO LBCR THAT IT IS "NOT UNFAIR" TO CONTINUE TO WITHHOLD PAYMENT FOR THE JUNE PURCHASES (RECEIPT OF WHICH FROM THE BUYERS IS ACKNOWLEDGED) UNTIL THE APRIL SALE DISPUTE IS SETTLED TO NOSAWA'S SATISFACTION; (D) THAT WASHINGTON'S (OR USG'S, IF EMBASSY ALSO CONCURS) FIRM RECOMMENDATION IS THAT PROMPT REMITTANCE OF DOLLARS FOR LBCR JUNE SALES INVOICES SHOULD BE MADE; AND (E) THAT ARBITRATION APPEARS TO BE THE MOST LOGICAL APPROACH TO RESOLVING THE DISPUTE ABOUT RESPONSIBILITY FOR HEALTH CONDITIONS OF HEIFERS SHIPPED IN APRIL.

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4. IN MAKING FINAL TWO POINTS ABOVE, NOTE OR MENTION SHOULD BE MADE THAT MOORE LETTER OF 10/28 STATES LBCR NOW INSISTS ON FULL PAYMENT OF JUNE INVOICES FOR \$55,915. IF EMBASSY CONCLUDES EARLIER PROFFERED DISCOUNT OF \$8050 WOULD BE AN IMPORTANT FACTOR IN PERSUADING NOSAWA TO REMIT BALANCE PROMPTLY, WE WILL URGE LBCR TO AGREE. ALSO THAT COMMERCE CONCLUDES, AFTER STUDY OF ALL INFORMATION NOW IN HAND, THAT TERMS OF ALL THREE SALES

WERE FOB U.S. PORT OF AIRLIFT AND THAT IF DISPUTE REGARDING APRIL SHIPMENT IS TO BE ARBITRATED, SUCH ACTION WOULD HAVE TO BE UNDER AUSPICES OF AMERICAN ARBITRATION ASSOCIATION RATHER THAN JAPANESE COUNTERPART. LBCR LETTER 10/28 INDICATES GREAT RELUCTANCE TO ACCEPT ANY ARBITRATION, BUT WE THINK THAT ATTITUDE CAN BE CHANGED IF PAYMENT FOR JUNE SALES IS MADE AND IF NOSAWA AGREES TO ACCEPT U.S. ARBITRATION.

5. COMMERCE PLANNING TO MENTION ARBITRATION AND DISCOUNT CONCESSION POINTS BY LBCR IN RESPONDING TO LETTER OF 11/22 ON FIRM'S BEHALF RECEIVED FROM SENATOR MANSFIELD. LATTER'S PERSONAL INTEREST IN CASE WILL REQUIRE CONSIDERATION OF POSSIBLE ALTERNATIVES IF RENEWED EMBASSY NEGOTIATION IS UNSUCCESSFUL IN ACHIEVING OBJECTIVES 3D AND 3E. KISSINGER

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